THE HONOURABLE SRI JUSTICE

ELIPE DHARMA RAO

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WRIT PETITION No.5708 OF 2005

O R D E R :

Questioning the Proceedings of the first respondent dated 14-7-2005 passed in RC.No.106/2005-P5, removing the petitioner from her post under section 249 (1) of AP Panchayat Raj Act, 1994 on the basis of the report submitted by the second respondent through Lr.Rc.No.1810/2004A, dated 14-12-2004 stating that the petitioner has misappropriated the Panchayat funds amounting to Rs.2,85,146/- through another report of the second respondent dated 02-6-2005, the petitioner filed this writ petition.

The petitioner submits that she had contested for the post of Sarpanch, under SC (Women) as Telugu Desam candidate and was elected as Sarpanch in the month of August 2001 of Moturu Gram Panchayat, which is a major Gram Panchayat having 23 Gram Panchayats under Gudivada Revenue Mandal.

The petitioner submits that while discharging the duties of Sarpanch, she had carried out several improvement programmes for the development of the village viz., constructed five buildings for running Angannvadi schools, four banks and brought several extents of land under cultivation.

The petitioner submits that as per the instructions of the Commisioner and

Government, the Secretary is empowered to collect taxes and other cists and deposit the same in treasury. Likewise, the Bill Collector is empowered to collect the property tax and deposit in treasury. The fish tanks have to be auctioned under the supervision of Secretary and he has to deposit the lease amount in the treasury. Thereafter, it has come to light that the Secretary and Bill Collector has not deposited the amounts as collected and therefore, she made a complaint to the second respondent, who in turn conducted enquiry into the matter and recommended to the first respondent for suspension. Accordingly, the first respondent suspended the Secretary through Proceedings RC.No.3086/2004 Pts.6, dated 11-1-2005.

The petitioner also submits that the second respondent appears to have conducted an enquiry and found that the Secretary has misappropriated an amount of Rs.65,457/-, as the same were spent without any proper instructions and the amounts were not accounted for. Further during the course of enquiry she was not given any opportunity of notice or recorded her statement. But to her utter shock and dismay, a show cause notice was issued on 22-1-2005 making certain allegations of misappropriation amounting to Rs.5,44,290-80 paise. Thereafter, she submitted her explanation, in which she clearly brought to the notice of the court that the Secretary who is responsible to collect the amounts has not accounted for and the bills and vouchers pertaining to the transactions are in his custody. At the time of issuing show cause notice no enquiry was held, no details of charges were furnished to her. But she was removed from the post of Sarpanch through proceedings RC.No.106/2005 P5, dated 14-7-2005.

In this context, the petitioner submits that the impugned proceedings was passed by the first respondent on the basis of the report submitted by the second respondent, a copy of which was not supplied to her before passing the order nor she was given any notice during the course of enquiry.

The learned counsel for the petitioner seeks to contend that the entire action initiated against the petitioner was due to political rivalry and it is nothing but politically motivated and it is at the instance of MLA of Mudinepalli constituency who is presently a Minister. The learned counsel for the petitioner therefore prayed to set aside the order impugned.

Heard the learned counsel for the petitioner as well as the learned Govt.Pleader for Panchayat Raj and Rural Development.

Considering the facts and circumstances of the case, without going into the merits or otherwise, the petitioner without availing alternative efficacious remedy available to her under Section 249 (7) of the A.P.Panchayat Raj Act, 1994 wherein any person aggrieved by an order of removal passed by the District Collector under sub-section (1) or sub-section (4) may, within thirty days from the date of the order prefer an appeal to the Government and the Government may, pending a decision on such appeal, stay the order appealed against, has approached this court and filed the present writ petition. The writ petition therefore not maintainable on the ground of not availing the alternative remedy available to her under section 249 (7) of the AP Gram Panchayat Act, 1994. The writ petition is therefore, liable to be dismissed.

The writ petition is accordingly dismissed. The petitioner is directed to file an appeal

as contemplated under section 249 (7) of the AP Gram Panchayat Act, 1994. On filing such appeal, the Government may, pending a decision on such appeal, stay the order appealed against and pass appropriate order on merits and in accordance with law within four weeks thereafter after affording reasonable opportunity of hearing the petitioner.

With the above direction, the writ petition is dismissed at the admission stage. No costs.

JULY 22nd, 2005. ----------

ISL. ELIPE DHARMA RAO, J.